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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,847	01/31/2001	Harald Krondorfer	1466	6258
7590 12/19/2008 STRIKER, STRIKER & STENBY 103 East Neck Road Huntington, NY 11743			EXAMINER WEEKS, GLORIA R	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 12/19/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/774,847

Applicant(s)

KRONDORFER ET AL.

Examiner

GLORIA R. WEEKS

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-28 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13 and 18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 11, 14-17, 19-28 and 30-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

1. This action is in response to the amendment and remarks received on September 18, 2008.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 32 recites the limitation "said axis of the elastic vibration damping element" in lines 16-17. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 14, 15, 17, 19, 20, 24-28 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Driggers (USPN 4,819,742).

Regarding claims 11, 14, 15, 17, 19, 20, 24-28 and 31, Driggers discloses a hand power tool comprising: a housing 12; at least one handle having at least one gripping part 42, 50; a mounting part 16; at least one elastic, vibration damping element 60 mounted on the mounting

part 16, the at least one gripping part 42, 50 being mounted on the housing 12 through the elastic element 60 and through the mounting part 16; at least one movable rigid 62 safety element and non-rigid safety element 68 through which the gripping part 42, 50 is connected with the mounting part 16, the safety element 62 being movable relative to the gripping part 42, 50 in at least a tilting direction 58 and a longitudinal direction during a predetermined operation relative to the gripping part 42, 50 (column 5 lines 30-58); wherein the gripping part 42, the mounting part 16, the elastic element 60, and the safety element 62 are coaxially.

In reference to claim 30, Applicant has recited the phrase “connected to” to describe the orientation of the mounting part with a surface of the elastic element that is perpendicular to the coaxial axis of the handle components. During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. Thus, Examiner has interpreted the phrase “connected to” to simply require the claimed elements be joined or linked to one another with or without the interference of additional structure. The perpendicular surfaces of the elastic element disclosed by Driggers (figure 3) are found to be connected to the mounting part and the gripping part via the parallel surfaces of the elastic element.

With respect to claim 32, figure 3 of Driggers illustrates at least one “area” of the safety element 62 oriented perpendicular to the coaxial axis of the mounting part 16, the gripping part 42, the elastic element 60 and the of the safety element 62 that is 3 times smaller than “a” width

of the elastic element oriented perpendicular to the coaxial axis. Since Applicant has used the phrase "area" with respect to a designated width of the safety element, Examiner has interpreted such language to encompass merely a portion of the width of the safety element in a direction perpendicular to the coaxial axis, rather than the entire width of the safety element. The same rational is applied to the referenced width of the elastic element.

6. Claims 11, 14-17, 19-21 and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Matechuk (USPN 5,605,500).

Regarding claims 11, 14-17, 19-21 and 24-28, Matechuck discloses a hand power tool comprising: a housing 46; at least one handle having at least one gripping part 44; a mounting part 78; at least one elastic, vibration damping element 76 mounted on the mounting part 78, the at least one gripping part 44 being mounted on the housing 46 through the elastic element 76 and through the mounting part 78; at least one movable (30), rigid rod 22 safety element through which the gripping part 44 is connected with the mounting part 78, the safety element 22 being movable relative to the gripping part 44 in at least a tilting direction 72 and a longitudinal direction during a predetermined operation of disassembly relative to the gripping part 44 to avoid a passage of vibration through the safety element 22; wherein the gripping part 44, the mounting part 78, the elastic element 76, and the safety element 22 are coaxially; and wherein the elastic element 76 surrounds the safety element 22.

Allowable Subject Matter

7. Claims 22 and 23 are allowed.

Response to Arguments

8. Applicant's arguments filed September 18, 2008 have been fully considered but they are not persuasive.

9. With respect to the rejection of claim 11 in view of Drigger, Applicant has argued that Drigger fails to disclose a rigid safety element movable relative to a gripping part. As cited above, Examiner has identified the rigid safety element of Drigger as clamp member 62, and the gripping part as arm 52 of handgrip section 36. Column 5 line 65- column 6 line 2 of Drigger states that ear portions 68 of the rigid safety element 62 are movable in a tightening manner about mount 16, and subsequently relative to the gripping part 52. Thus, Examiner finds Drigger to meet the limitations of Applicant's invention as provided in claim 11.

10. Regarding the rejection of claim 11 in view of Matechuk, Applicant has argued that Matechuk fails to disclose an elastic element and a rigid safety element, wherein the rigid safety element is movable with respect to a handle. With respect to Examiner's interpretation of the disclosure of Matechuk, figure 2 illustrates element 44 as a handle, while figure 1 illustrates component 76 as an elastic element surrounding a rigid safety element 22. The rigid safety element 22 is secured to the handle 44 via threads 72, thus allowing the safety element to rotate relative to the handle 44. Thus, Examiner finds Matechuk to meet the limitations of Applicant's invention as provided in claim 11.

In response to Applicant's argument that Matechuk discloses provision of elastic element 76 for a different reason than that of Applicant, the fact that Applicant has recognized another

advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.¹

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

¹ See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit
3721

December 19, 2008
